



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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1050 Connecticut Ave., N.W., Suite 1100
Washington, DC 20036

DEC 22 2017

RE: MUR 7073
(Meluskey for U.S. Senate, Inc. and
Julianne Ryan in her official capacity
as treasurer, *et al.*)

Dear Mr. Braden:

On May 26, 2016 and May 27, 2016, the Federal Election Commission (the "Commission") notified Alexander Meluskey and Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer (the "Committee"), of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the Complaint was forwarded to Mr. Meluskey and the Committee at that time.

Upon review of the allegations contained in the Complaint, information supplied by Mr. Meluskey and the Committee, and publicly available information, the Commission, on December 12, 2017, found that there is reason to believe Alexander Meluskey violated 52 U.S.C. § 30102(e)(1) by failing to file a timely Statement of Candidacy and the Committee violated 52 U.S.C. §§ 30104(b)(2) and 30120(a) by failing to disclose in-kind contributions and by failing to include the appropriate disclaimers in episodes of "The Alex Meluskey Show." The Commission also found no reason to believe that the Committee violated 52 U.S.C. § 30104(b)(5)(A) or (6)(A) by failing to disclose disbursements it made for printing. At this time the Commission has not resolved by an affirmative vote of at least four Commissioners whether the Committee violated 52 U.S.C. § 30104(b) by failing to accurately disclose the source of funds Alexander Meluskey loaned to the Committee. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹ For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Shanna Reulbach, the attorney assigned to this matter, at (202) 694-1638 or sreulbach@fec.gov.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities, *id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

1
2
3 RESPONDENTS: Alexander Meluskey MUR: 7073
4 Meluskey for U.S. Senate, Inc. and Julianne Ryan
5 in her official capacity as treasurer
6

7 **I. INTRODUCTION**
8

9 This matter was generated by a Complaint filed with the Federal Election Commission
10 (the "Commission") by Karen Schutte. The Complaint alleges that 2016 Arizona Republican
11 primary candidate for the U.S. Senate Alexander Meluskey and his principal campaign
12 committee, Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer
13 (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the
14 "Act"), by failing to disclose disbursements for printing expenses. The Complaint also alleges
15 that Meluskey used his weekly talk radio show to engage in campaign activity and, therefore, the
16 funder of the radio show made contributions to the Committee, which the Committee failed to
17 disclose.¹

18 As an initial matter, the Commission finds reason to believe that Meluskey failed to file a
19 timely Statement of Candidacy, in violation of 52 U.S.C. § 30102(e)(1). The Commission finds,
20 however, that there is no reason to believe that the Committee failed to disclose its printing
21 expenses, in violation of 52 U.S.C. § 30104(b). The Commission then finds reason to believe
22 that the Committee accepted and failed to disclose in-kind contributions in connection with

¹ In addition to the allegations implicating possible violations of the Act, the Complaint also alleges that Meluskey publicly misrepresented that he is the Arizona State Director of the organization FAIRTax. Compl. at 1 (May 23, 2016). The Complaint claims both that the organization is fictitious and that Meluskey does not hold a position with it. *See id.* Meluskey has rebutted these allegations with a sworn declaration, in which he provided a working link to FAIRTax's website and swore that he was the Arizona State Director. Alexander Meluskey Decl. ¶ 14 (Aug. 26, 2016).

1 Meluskey's talk radio show and failed to include disclaimers in the radio broadcasts, in violation
2 of 52 U.S.C. §§ 30104(b) and 30120(a).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Alexander Meluskey was a candidate for Senate in the 2016 Arizona Republican Primary
5 Election.² Both before and during his candidacy, Meluskey owned a printing business, Optimum
6 Graphics USA, LLC ("Optimum Graphics"), owned and hosted a weekly talk radio show, "The
7 Alex Meluskey Show," which aired on three Arizona radio stations, and was the state director of
8 FAIRtax, a 501(c)(4) organization dedicated to reforming the Tax Code.³ Meluskey filed a
9 Statement of Candidacy on May 27, 2015,⁴ and suspended his campaign on July 31, 2016, about
10 a month prior to the August 30, 2016 Republican Primary.⁵

11 **A. There is Reason to Believe that Meluskey Failed to Timely File his Statement**
12 **of Candidacy**

13
14 Within fifteen days of becoming a candidate, the candidate must designate a principal
15 campaign committee by filing a Statement of Candidacy with the Commission.⁶ The principal
16 campaign committee must file a Statement of Organization within ten days of its designation,⁷

² Alexander Meluskey, Statement of Candidacy (May 27, 2015) ("Statement of Candidacy").

³ Compl. at 1; Meluskey Decl. ¶¶ 1-2, 7, 14, 16-18; *About Americans for Fair Taxation, FAIRTAX*, <https://fairtax.org/about> (last visited Apr. 11, 2017).

⁴ Statement of Candidacy, *supra* note 2.

⁵ Meluskey Decl. ¶ 4; *2016 Primary Election ~ August 30, 2016*, ARIZ. SEC'Y OF STATE, <http://apps.azsos.gov/election/2016/Primary/ElectionInformation.htm> (last visited Apr. 11, 2017).

⁶ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁷ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

1 and must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a)
2 and (b).⁸

3 The record indicates that Meluskey became a candidate on or about February 10, 2015.⁹
4 Accordingly, his Statement of Candidacy was due on or about February 25, 2015. However, he
5 waited until May 27, 2015, after the Commission provided him with a disavowal notice, to file
6 his Statement of Candidacy.¹⁰ Accordingly, Meluskey filed his Statement of Candidacy
7 approximately three months late, and the Commission finds reason to believe that he violated 52
8 U.S.C. § 30102(e)(1).¹¹

9 **B. There is No Reason to Believe that the Committee Failed to Disclose Its**
10 **Printing Expenses**

11 A candidate's principal campaign committee must disclose its disbursements in periodic
12 reports to the Commission.¹² Specifically, the committee must disclose the name and address of
13

⁸ See, e.g., Factual & Legal Analysis at 6, MUR 6735 (Friends of Joe Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning for Senate 2012 Exploratory Committee); Factual & Legal Analysis at 2, MUR 5363 (Rev. Al Sharpton Presidential Exploratory Committee).

⁹ See 52 U.S.C. § 30101(2); Meluskey for U.S. Senate, Inc., Schedule B, 2015 April Quarterly Report (Apr. 20, 2015) ("2015 April Quarterly Report") (indicating the Meluskey Committee disbursed over \$5,000 in connection with the primary election by February 10, 2015); Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (Amendment 1) (Oct. 7, 2015) (acknowledging that Meluskey had become a candidate on February 13, 2015).

¹⁰ Alexander Meluskey, Disavowal Notice (May 26, 2015). The Commission sends a disavowal notice when it appears that a person has become a candidate but has not yet filed a Statement of Candidacy. See *id.* The notice instructs the person to either disavow the financial activities that appear to have triggered his candidate status or file a Statement of Candidacy. See *id.*

¹¹ Because the Committee registered with the Commission on March 10, 2015—prior to Meluskey filing his Statement of Candidacy—and filed a 2015 April Quarterly Report, Meluskey's late filing did not cause the Committee to miss any reports or the deadline for organizing as a committee. See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a); Meluskey for U.S. Senate, Inc., Statement of Organization (Mar. 10, 2015); 2015 April Quarterly Report, *supra* note 9.

¹² 52 U.S.C. § 30104(a)(2), (b)(4)-(5); 11 C.F.R. §§ 104.3(b)(2), (4), 104.5(a).

1 any person to whom it disburses, in aggregate, more than \$200, together with the date, amount,
2 and purpose of the expenditure.¹³

3 The Complaint alleges that, despite the Committee distributing items like posters and
4 fliers, “there have never been any disclosures for printing done by Optimum Graphics or for that
5 matter any other ‘printing.’”¹⁴ However, contrary to the allegation, the Committee’s reports
6 disclose numerous disbursements for printing. As the Committee stated in its Response, it
7 reported seven printing disbursements to Optimum Graphics between May 2015 and April 2016,
8 totaling \$49,893.¹⁵ The Committee also reported tens of thousands of dollars of disbursements to
9 other companies for “printing,” “copying,” and the production of printed materials, such as
10 mailers, yard signs, newspaper inserts, and banners.¹⁶ As there is no information suggesting that
11 the Committee’s disclosure was incomplete, the Commission finds no reason to believe that the
12 Committee violated 52 U.S.C. § 30104(b)(5)(A) or (6)(A) by failing to disclose expenses for
13 printing.

¹³ 52 U.S.C. § 30104(b)(5)(A), (6)(A); 11 C.F.R. § 104.3(b)(4).

¹⁴ Compl. at 1 & Attach. C.

¹⁵ Committee Resp. at 4 (Aug. 29, 2016); *see also* Meluskey Decl. ¶ 11. Meluskey also swore that the Committee paid Optimum Graphics the full market value of the printing, and we have no information contradicting his declaration. *See* Meluskey Decl. ¶ 12. Therefore, to any extent the Complaint asserts that the Committee failed to disclose contributions from Optimum Graphics, the Response rebuts that allegation. *See* 11 C.F.R. § 100.52(d)(1) (stating that a discount on goods and services constitutes a contribution).

¹⁶ *See* Schedule B of the Committee’s 2015 April Quarterly, October Quarterly, and Year-End Reports and 2016 April Quarterly, July Quarterly, Pre-Primary, and October Quarterly Reports.

1 **C. There is Reason to Believe that the Committee Accepted and Failed to**
2 **Report Contributions and Failed to Include the Appropriate Disclaimers in**
3 **Connection with Meluskey's Radio Show**
4

5 The Act and Commission regulations define "contribution" and "expenditure" to include
6 any gift of money or "anything of value" for the purpose of influencing a federal election.¹⁷ The
7 term "anything of value" includes in-kind contributions.¹⁸ "Anything of value," however, does
8 not include the provision of goods and services at the usual and normal charge.¹⁹ Candidate
9 committees must disclose the identity of any person who makes contributions aggregating in
10 excess of \$200 within an election cycle.²⁰ Corporations are prohibited from making
11 contributions to a candidate for Federal office.²¹ Candidate committees are prohibited from
12 knowingly accepting contributions from corporations and limited liability companies that elect to
13 be treated as corporations by the Internal Revenue Service.²²

14 1. The Press Exemption Does Not Apply to the "Alex Meluskey Show"

15 Exempt from the definition of "contribution" and "expenditure" is "[a]ny cost incurred in
16 covering or carrying a news story, commentary, or editorial by any broadcasting station . . . Web
17 site, newspaper, magazine, or other periodical publication . . . unless the facility is owned or
18 controlled by any political party, political committee, or candidate[.]"²³ This exemption is

17 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

18 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

19 *Id.*

20 52 U.S.C. § 30104(b)(3)(A).

21 *Id.* § 30118(a); 11 C.F.R. § 114.2(b).

22 52 U.S.C. § 30118(a); 11 C.F.R. §§ 110.1(g); 114.2(b).

23 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

1 known as the “press exemption” or “media exemption.”²⁴ A communication subject to the press
2 exemption is also exempt from the Act’s disclosure, disclaimer, and reporting requirements.²⁵

3 In order to assess whether the press exemption applies to a communication, the
4 Commission uses a two-part test.²⁶ First, it asks whether the entity that engaged in the activity is
5 a “press entity” as described by the Act and regulations.²⁷ Second, if the entity is a press entity,
6 the exemption will apply so long as it (a) is not owned or controlled by a political party, political
7 committee, or candidate, and (b) is acting within its “legitimate press function” in conducting the
8 activity.²⁸ Where, as here, a candidate owns or controls a radio show that features express
9 advocacy and the candidate pays to broadcast it, the press exemption does not apply.²⁹

10 Meluskey began hosting the “Alex Meluskey Show,” sometimes known as “Fair Tax for
11 All Radio,” in approximately August 2013.³⁰ Meluskey contracted with radio stations to
12 broadcast the show. Each episode of the show aired on three Arizona radio stations: KKNT,
13 KQNA, and KFNX.³¹ The stations are owned by Salem Media Group, Inc. (“Salem”), Prescott

²⁴ Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

²⁵ *Id.* at 7.

²⁶ *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

²⁷ AO 2010-08 at 4; AO 2005-16 at 4.

²⁸ *Reader's Digest Ass'n, Inc. v. Fed. Election Comm'n*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

²⁹ See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1215.

³⁰ Meluskey Decl. ¶ 2; *The Alex Meluskey Show*, FACEBOOK, <https://www.facebook.com/TheAlexMeluskeyShow/> (last visited Apr. 11, 2017) (“The Alex Meluskey Show Facebook Page”).

³¹ The Alex Meluskey Show Facebook Page, *supra* note 30.

1 Valley Broadcasting Co., Inc. (“Prescott Valley”), and Premier Radio Stations, LLC (“Premier”),
2 respectively.

3 Recent episodes of “The Alex Meluskey Show” are available online as podcasts. The last
4 five episodes that Meluskey hosted as a candidate (those airing between May 28, 2016, and
5 June 25, 2016) are available in this format.³² After the June 25 episode, Meluskey’s campaign
6 manager, Craig Bergman, took over the show because Meluskey believed that the Act’s
7 restrictions on electioneering prevented him from continuing to host in the run-up to the
8 primary.³³ Bergman hosted five shows before Meluskey dropped out of the race.³⁴ Meluskey
9 resumed hosting the show after he withdrew his candidacy.³⁵

10 The Complaint alleges that Meluskey used his radio show to campaign for the U.S.
11 Senate, and thus the person or entity that paid for the airtime made an undisclosed contribution to
12 the Committee.³⁶ In Response, the Committee contends that Meluskey began hosting the show
13 before he became a candidate and that the purpose of the show is “to discuss current events and
14 provide commentary on items of interest to the citizens of Arizona,” not campaign for office.³⁷
15 Information in the record indicates that Meluskey purchased airtime and related services for his
16 show at the usual and normal rate. This evidence shows that Meluskey was not a paid radio host

³² See *The Alex Meluskey Show*, SOUNDCLOUD, <https://soundcloud.com/alexmeluskey> (last visited Apr. 11, 2017) (“SoundCloud”).

³³ *Id.* (June 25, 2016 episode at minute 1:14).

³⁴ See *id.* (July 2, 9, 16, 23, and 30, 2016 episodes).

³⁵ See Meluskey Decl. ¶¶ 17-18; see generally SoundCloud, *supra* note 32.

³⁶ Compl. at 1.

³⁷ Committee Resp. at 2, 5-6.

1 employed by the radio station; rather, Meluskey paid Salem, Prescott Valley, and Premier to
2 broadcast and promote the “The Alex Meluskey Show.”

3 The information in the record does not establish how, or through what entity, Meluskey
4 made payments to KKNT, KQNA, and KFNB to air his radio show. Information available to the
5 Commission establishes that there are three possible payors: Meluskey in his individual capacity,
6 Optimum Graphics, and Virtuous Communications, LLC (“Virtuous Communications”).
7 Virtuous Communications is a limited liability company registered in Arizona.³⁸ Meluskey is its
8 sole member.³⁹

9 The Commission concludes that the press exemption does not apply to “The Alex
10 Meluskey Show” because Meluskey (or organizations he owned) owned and controlled the show
11 while he was a candidate⁴⁰ and Meluskey (or an entity he owned) paid to air the show.⁴¹

³⁸ Virtuous Communications, LLC, Articles of Organization, Az. Corp. Comm’n (Jan. 21, 2015), *available at* <http://corporations.images.azcc.gov/04956008.pdf>.

³⁹ *Id.*

⁴⁰ The fact that the candidate owned and controlled “The Alex Meluskey Show” and paid to air his own commentary distinguishes this matter from a number of other matters where the press exemption applied to press organizations that employed candidates to host shows owned or controlled by the radio stations. *See* Factual & Legal Analysis, MUR 6242 (J.D. Hayworth 2010) (finding no reason to believe a committee violated the Act when a radio station broadcast employed a radio host who was a candidate); MUR 5555 (Friends of Dave Ross); MUR 4689 (Dornan) (finding no reason to believe a committee violated the Act when a candidate employed by a radio station served as a guest-host on several nationally syndicated radio shows); Advisory Op. 1994-15 (Byrne) (concluding no contribution results from the broadcast of a regularly scheduled radio show hosted by a candidate informing listeners on issues and lacking express advocacy or solicitations for contributions).

⁴¹ *See* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *Reader’s Digest Ass’n, Inc.*, 509 F. Supp. at 1215.

1 Moreover, the show included express advocacy and solicited contributions to Meluskey's
2 campaign.⁴²

3 2. "The Alex Meluskey Show" Engaged in Express Advocacy and Solicited
4 Contributions Without the Required Disclaimers
5

6 Because the press exemption does not exempt "The Alex Meluskey Show" from the
7 Act's disclaimer requirements, the Commission reviews whether Meluskey made solicitations
8 and engaged in express advocacy on the air. The Commission concludes that he did, and that
9 episodes of "The Alex Meluskey Show" therefore required disclaimers.

10 Whenever a person airs a public communication that solicits contributions or expressly
11 advocates the election or defeat of a clearly identified candidate, that person must include a
12 disclaimer in the communication, with specific language set out in the regulations.⁴³
13 Commission regulations define "solicit" as "to ask, request, or recommend, explicitly or
14 implicitly, that another person make a contribution"⁴⁴ The regulations also provide that a
15 "solicitation" is a "communication that, construed as reasonably understood in the context in

⁴² Compare Vice Chairman Darryl Wold & Commissioners Lee Ann Elliot, David A. Mason & Karl J. Sandstrom, Statement of Reasons for Voting to Withdraw the Commission's Complaint in *FEC v. Forbes, et al.* at 3 (May 26, 1999) ("None of the columns mentioned directly or indirectly that Mr. Forbes was a candidate for President, mentioned any other candidate for President, referred in any way to the presidential campaign . . . [nor increased] the exposure given to Mr. Forbes' columns in the magazine, nor the distribution of the magazine.").

⁴³ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). The term "public communication" includes communications "by means of any broadcast." 52 U.S.C. § 30101(22). A candidate is "clearly identified" when the communication includes the name or a photograph or drawing of the candidate or "the identity of the candidate is apparent by unambiguous reference." *Id.* § 30101(18).

⁴⁴ 11 C.F.R. § 300.2(m). While the definitions in Part 300 of the Commission regulations apply to the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), the Commission has used 11 C.F.R. § 300.2(m)'s definition of "solicit" and "solicitation" to inform its analysis of non-BCRA portions of the Act. See Factual & Legal Analysis, MUR 6528 (Michael Grimm for Congress); see also Factual & Legal Analysis at 4 & n.16, MUR 6827 (Kent Roth for Kansas) (citing *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (1986), for the proposition that "[t]he normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

1 which it is made, contains a clear message asking, requesting, or recommending that another
2 person make a contribution”⁴⁵

3 A review of the available episodes that Meluskey hosted as a candidate shows that, every
4 week, Meluskey solicited contributions to his campaign.⁴⁶ For example, Meluskey directed
5 people to his website so that they could make contributions, stated that they “need to go out” and
6 “contribute” to his campaign, told his listeners that he is “counting on [their] support,” said that
7 he would love his listeners’ support and he needs “all the contributions [he] can get,” and
8 emphasized his opponent’s fundraising advantage over his own.⁴⁷ During his final episode
9 before the election, Meluskey also gave people instructions on how to purchase tickets to one of
10 his fundraising events and stated that he would appreciate everyone who attends.⁴⁸ Moreover,
11 Meluskey acknowledged that his on-air solicitations were successful during his June 11 episode,
12 when he stated that he sometimes noticed a “flux” of contributions on days that his show was
13 airing.⁴⁹

14 Furthermore, during many of the episodes, Meluskey and Bergman expressly advocated
15 the election or defeat of a clearly identified candidate. Meluskey told his listeners that they
16 “need to go out” and vote for him, “the one candidate that . . . can actually win in November,”
17 and Bergman asked people to “[v]ote for [his] friend Alex,” and told listeners that the person

⁴⁵ 11 C.F.R. § 300.2(m).

⁴⁶ See generally SoundCloud, *supra* note 32.

⁴⁷ See *id.* (May 28, 2016 episode at minute 2:49; June 4, 2016 episode at minute 42:00; June 11, 2016 episode at minutes 13:23 and 28:27; June 18, 2016 episode at minute 1:08; and June 25, 2016 episode at minutes 10:36, 12:30, 21:06, and 25:04); see also 11 C.F.R. § 300.2(m).

⁴⁸ SoundCloud, *supra* note 32 (June 25, 2016 episode at minute 25:04).

⁴⁹ *Id.* (June 11, 2016 episode at minute 28:27).

1 they “want to vote for is the real, true, proven conservative, Alex Meluskey.”⁵⁰ By naming
2 Meluskey and asking or telling people to vote for him, the show engaged in express advocacy of
3 a clearly identified candidate.⁵¹

4 Because any public communication that solicits contributions for a candidate or expressly
5 advocates the election of a clearly identified candidate requires a disclaimer, and none of the
6 available episodes of “The Alex Meluskey Show” contained disclaimers, the Commission finds
7 reason to believe that the Committee violated 52 U.S.C. § 30120(a).

8 3. The Funding for “The Alex Meluskey Show” is a Contribution, but the
9 Source of the Contribution is not Clear

10
11 By soliciting contributions and expressly advocating his own election, Meluskey also
12 evidenced an intent to influence a federal election. This means that any money spent on airing
13 the show was a contribution to the Committee, which the Committee was obligated to disclose.⁵²
14 The existing record is unclear, however, on whether Meluskey paid for the show with his
15 personal funds, or from funds controlled by Virtuous Communications or Optimum Graphics.

16 If Meluskey paid for the show using his personal funds, the Committee could accept the
17 contributions because candidates may make unlimited contributions to their committees from
18 their personal funds but still must report those contributions.⁵³ However, if Virtuous
19 Communications or Optimum Graphics, each a limited liability company with unknown federal

⁵⁰ *Id.* (June 25, 2016 episode at minute 10:36; July 2, 2016 episode at minute 6:11; July 16, 2016 episode at minute 13:58).

⁵¹ 52 U.S.C. § 30101(18); 11 C.F.R. § 100.22.

⁵² *See* 52 U.S.C. §§ 30101(8)(A)(i), 30104(b)(3)(A).

⁵³ *See* 11 C.F.R. § 110.10.

1 tax status, paid for the show, the Committee may have accepted a prohibited corporate
2 contribution depending on the corporate tax status of the entity.⁵⁴

3 In light of the uncertainty as to who paid for the radio show, and given information that
4 suggests LLCs controlled by Meluskey might have paid for the show, the Commission does not
5 resolve at this time whether the Committee accepted prohibited contributions, in violation of 52
6 U.S.C. § 30118(a). However, because the Committee failed to disclose payments for the radio
7 show as in-kind contributions, the Commission finds reason to believe that the Committee
8 violated 52 U.S.C. § 30104(b) and authorizes discovery of the source of the payments.

⁵⁴ See *id.* § 110.1(g).